



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF APPEALS & OPINIONS
CRIMINAL APPEALS & FEDERAL HABEAS BUREAU

VIA ECF

December 10, 2020

Hon. Debra C. Freeman
United States Magistrate Judge
United States District Court for the
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

The request for sealing is granted.
The Clerk of Court is directed to mail
a copy of this Order to Petitioner.

SO ORDERED


DEBRA FREEMAN
United States Magistrate Judge
Dated: 12/11/2020

Re: *Giardala v. Bell*,
1:19-cv-11917-PGG-DCF

Your Honor:

I am the Assistant Attorney General representing the respondent in the above-referenced habeas corpus matter. Respondent hereby moves pursuant to Fed.R.Civ.P. 5.2(d), to file under seal the State Court Record and state-court transcripts to be filed in this case by respondent on December 14, 2020.

Petitioner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he alleges that he is in state custody in violation of his federal constitutional rights. The petition arises from petitioner's conviction in 2016 in New York County Supreme Court of, among other crimes, Rape in the First Degree.

Under New York Civil Rights Law § 50-b, the “identity of any victim of a sex offense . . . shall be confidential,” and as such, “[n]o report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection.” N.Y. Civil Rights Law § 50-b. On direct appeal in the Appellate Division, First Department, the People requested that in order to protect the identity of the victim pursuant to Civil Rights Law § 50-b, the state filings in this case be kept "confidential" and "not be made available for public inspection."

On December 14, 2020, respondent intends to file with this Court an answer and memorandum of law opposing the petition, along with a copy of the State Court Record and all relevant state-court transcripts. Respondent seeks to continue to protect the victim's identity in this case by refraining from mentioning the victim's name in respondent's answer and memorandum of law. The victim's name, however, appears hundreds of times throughout the State Court Record, including in the briefs and exhibits submitted in state court, as well as in the relevant transcripts of proceedings. As such, redaction of the victim's name in the state-court documents is not a reasonable option, especially given that the support staff of the Office of the Attorney General is largely working from home at this time.

Accordingly, in order to fulfill its responsibility to protect the privacy of the victim, respondent respectfully requests an order, pursuant to Fed.R.Civ.P. 5.2(d), directing that the State Court Record and state-court transcripts to be submitted by respondent on December 14, 2020, be filed under seal.

I have not contacted petitioner concerning this request as he is proceeding *pro se* and is incarcerated.

Respectfully,

/s/ Paul B. Lyons
Paul B. Lyons (PL 5036)

Assistant Attorney General
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(212) 416-8229

DECLARATION OF SERVICE

PAUL B. LYONS, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows: that on December 10, 2020, he mailed the attached letter motion to petitioner via the United States Postal Service to the following address:

Joseph Giardala
DIN No. 16A3668
Clinton Correctional Facility
P.O. Box 2001
Dannemora, NY 12929

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 10, 2020.

/s/ Paul B. Lyons
PAUL B. LYONS (PL 5036)
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